APPENDIX A

MICHIGAN SUPREME COURT
Lansing, Michigan

[Filed February 27, 2004]

SC:123150
COA:231167
MacombCC:98-002111-DM

SANDRA, M. KNUTH,
Plaintiff-Appellee,

v.

THOMAS E. KNUTH,
Defendant-Appellant.

Maura D. Corrigan, *Chief Justice*.

Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly, Clifford W. Taylor, Robert P. Young, Jr., Stephen J. Markman, *Justices*.

DENIED

On order of the Court, the motion for reconsideration of this Court's order of October 24, 2003 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, CORBIN R DAMS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

APPENDIX B

MICHIGAN SUPREME COURT
Lansing, Michigan

[Filed October 24, 2003]

SC:123150
COA:231167
MacombCC:98-002111-DM

SANDRA M. KNUTH,
Plaintiff-Appellee,

v.

THOMAS E. KNUTH,
Defendant-Appellant.

Maura D. Corrigan, *Chief Justice*.

Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly, Clifford W. Taylor, Robert P. Young, Jr., Stephen J. Markman, *Justices*.

ORDER

On order of the Court, the parties having presented oral argument on the application for leave to appeal, the application is further considered, and it is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX C

MICHIGAN SUPREME COURT
OFFICE OF PUBLIC INFORMATION

FOR IMMEDIATE RELEASE

SUPREME COURT TO HEAR FIRST ORAL ARGUMENTS OF 2003-2004 TERM

LANSING, MI, October 13, 2003 - Sixteen cases, including a school funding dispute, will be heard by the Michigan Supreme Court this week in the first oral arguments of the Court's 2003-2004 term.

(Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys.)

KNUTH v. KNUTH (case no.123150)

Attorney: for plaintiff Sandra M. Knuth: Michael P. Kavanaugh/(586)776-1700.

Attorney for defendant Thomas E: Knuth: Marguerite Ann Hanes/(586) 493-9080.

Trial court /judge: Macomb County Circuit Court/Hon. Peter J. Maceroni.

At issue: The plaintiff-wife was living in Tennessee, and moved to Michigan with her son. Less than 180 days later, she filed for divorce and sought custody of the child. The defendant-husband filed a counter-complaint in Tennessee, but the Michigan court accepted jurisdiction over the divorce and the custody matter. Did the Michigan court have jurisdiction?

Background: Plaintiff Sandra M. Knuth left her marital home in Tennessee with her son and, while visiting her parents in Michigan, filed for divorce. The applicable Michigan statute provides that "A judgment of divorce shall not be granted by a court in this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint. . . .". Defendant Thomas E. Knuth filed a counter action in Tennessee. The Michigan court held that it had jurisdiction, saying that Sandra Knuth had "resided" in Michigan for the required period of time. Noting that Thomas E. Knuth was in the Army and that the couple had moved frequently during their 13 years of marriage, the trial judge said that Sandra Knuth's contacts with Michigan were sufficient to establish her ongoing residency. Both the child and mother had significant connections to Michigan and the mother was the first to file, the trial judge indicated. In an unpublished per curiam decision, the Court of Appeals affirmed the trial court's ruling. Thomas Knuth appeals, contending that state law demands actual residence of the plaintiff in Michigan for 180 days before filing a divorce complaint. Sandra Knuth contends that she always considered herself a Michigan resident, and that, as she moved with her husband from one military assignment to another, her intent was always to return to Michigan, where her family resided. She notes that she registered to vote in Michigan 1992 and maintained her fitness club membership in Michigan throughout the years she lived elsewhere.

APPENDIX D

STATE OF MICHIGAN COURT OF APPEALS

Macomb Circuit Court LC No. 98-002111-DM

SANDRA M. KNUTH,
Plaintiff-Appellee,

v.

THOMAS E. KNUTH,
Defendant-Appellant.

UNPUBLISHED
December 3, 2002
No. 231167

Before: Murphy, P.J., and Markey and R. S. Gribbs[1]*, JJ.

PER CURIAM.

Defendant appeals from a judgment of divorce and the trial court's grant of physical custody of the parties' minor child to plaintiff. This case was remanded to this Court by the Michigan Supreme Court for reinstatement after defendant's appeal was dismissed for failure to file a brief. We affirm.

First, defendant argues that the trial court erred in determining that it had subject-matter jurisdiction over the divorce proceedings pursuant to MCL 552.9. We disagree. Whether a court has subject-matter jurisdiction is a question of law. *Smith v Smith*, 218 Mich App 727, 729; 555 NW2d 271 (1996). A trial court's determination regarding the existence of subject-matter jurisdiction is a question of law

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[1] Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

that this Court reviews de novo. *Trudeau v Martin*, 237 Mich App 253, 255; 602 NW2d 630 (1999).

When there is a lack of jurisdiction over the parties or the subject matter, no matter what action may have been taken by the trial court, (tie action is void. *Altman v Nelson*, 197 Mich App 467, 472-473; 495 NW2d 826 (1992). MCL 552.9 provides:

> A judgment of divorce shall not be granted by a court in this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint and the complainant or defendant has resided in the county in which the complaint is filed for 10 days immediately preceding the filing of the complaint.

The residency and waiting period requirements of this statute are jurisdictional. *Smith, supra* at 730. Consequently, if these requirements are not met, the court cannot grant a judgment of divorce and must dismiss the case. *Id.*

When used in statutes conferring jurisdiction, residence is interpreted to mean legal residence or domicile. *Smith, supra* at 730. The issue of legal residency is principally one of intent. Id. Presence; abode, property ownership, and other facts are often considered, but intent is the key factor. *Id.* at 730-731. In *Curry v Jackson Circuit Court*, 151 Mich App 754, 757758; 391 NW2d 476 (1986), this Court discussed the legal definition of the term "reside" and concluded that "legal domicile" must be distinguished from mere residence or place of actual abode. A person's legal residence may not always be the place of his actual dwelling, and includes not only physical presence in a place, but also the accompanying intent of choosing that place as a permanent residence. *Id.* Here, plaintiff filed for divorce in 1998 after moving back to Michigan. The fact that the parties were buying a home in Tennessee, as they had done in other states where defendant

was stationed, is not dispositive of plaintiffs residence. Although both parties moved frequently during the marriage because of defendant's military commitment, plaintiff contended that she always intended to reside in Michigan, she frequently visited Michigan, she had a Michigan driver's license, she paid dues to the local branch of a fitness club, and she reregistered to vote in Michigan in 1992. On these facts, the trial court did not err in finding that plaintiff was a Michigan resident, *Smith, supra* at 730, and in finding subject matter jurisdiction under MCL 552.9.

Defendant also argues that the trial court erred when it determined that it had subject-matter jurisdiction over the custody dispute in this case. We do not agree. While the determination whether to decline jurisdiction under the Uniform Child Custody Jurisdiction Act, 28 USCS 1738(A)(2), is within the discretion of the trial court, *Brown v Brown*, 181 Mich App 61, 71; 448 NW2d 745 (1989), and will not, be reversed absent an abuse of that discretion, *Braden v Braden*, 217 Mich App 331, 338-339; 551 NW2d 467 (1996), the question whether a court has subject matter jurisdiction to hear a particular claim is a question of law which this Court reviews de novo. *Genesis Center PLC v Financial & Ins Services Comm'r*, 246 Mich App 531; 540; 633 NW2d 834 (2001).

In the instant case, defendant filed for divorce in Tennessee. The Tennessee court indicated its willingness to decline jurisdiction in the custody dispute. The Michigan trial court determined that it had jurisdiction over the custody matter pursuant to MCL 600.653(1)(b). The parties' minor child had significant connections with the state of Michigan because his mother had moved back to Michigan, several of his maternal relatives reside in Michigan, and there was substantial evidence available in Michigan regarding the minor child's present and future care. The trial court also noted that plaintiff's Michigan complaint for divorce was

filed prior to defendant's complaint for divorce in Tennessee. We find no error.

Finally, defendant argues that the trial court abused its discretion when it denied defendant an adjournment. There is no merit to this claim. The trial court was liberal in granting defendant's motions, adjourning this matter at least three times. The trial court gave defendant forty days to obtain substitute counsel. We find no abuse of discretion in the trial court's decision to deny yet another adjournment. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996).

We affirm.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Roman S. Gribbs

APPENDIX E

STATE OF MICHIGAN IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

File No. 98-211 DM

SANDRA M. KNUTH,

Plaintiff,

v.

THOMAS E. KNUTH,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for dismissal by summary disposition pursuant to MCR 2.116(C)(4).

Plaintiff filed her complaint for divorce on April 15, 1998. Plaintiff claims the parties were married in Eastpointe, Michigan on December 28, 1984 and a child, Alexander, was subsequently born to the parties on November 3, 1995. Plaintiff claims she is not pregnant and that, prior to the date of filing of her complaint, she has been a resident of this state for more than 180 days and a resident of Macomb County for more than 10 days.

In his motion, defendant argues plaintiff was actually a resident of the state of Tennessee at the time she filed her complaint for divorce and did not become a resident of Michigan until May 16, 1998. Defendant directs the Court to plaintiff's allegations as set forth in the complaint, the address which plaintiff listed on the summons, and the fact that plaintiff maintains a Tennessee Driver's License. Defendant contends plaintiff has no connections to Michigan other than the fact she moved here and currently lives with her mother in Eastpointe. Defendant accuses plaintiff of forum shopping.

Naturally, plaintiff disagrees. She asserts her residence is in Eastpointe Michigan and was so for at least 10 days prior to the time she filed her complaint. According to plaintiff, her only connection to Tennessee is the parties' marital residence. Plaintiff contends she and defendant have lived in several states since the date of their marriage because of his military obligations but she always claimed Michigan as her home state and always intended to return here. Finally, plaintiff explains she listed the Tennessee address on the summons for mailing purposes only while she was changing her address.

Whether a court has subject-matter jurisdiction is a question of law which may be raised at any time. *Smith v Smith*, 218 Mich App 727, 729-730; 555 NW2d 271 (1996). The burden is on the plaintiff to establish jurisdiction. *Id.*, at 729.

This Court's jurisdiction in a divorce action is strictly statutory as provided for at MCL 552.6; MSA 25.86. Its jurisdiction is limited, however, to litigants who satisfy the residency requirements of MCL 552.9(1); MSA 25.89(1):

> A judgment of divorce shall not be granted by a court in this state in an action of divorce unless the complainant or defendant has resided in this state for 180 days, immediately preceding the filing of the complaint and; except as otherwise provided in subsection (2), the complainant or defendant has-resided in the County in which the complaint is filed for 10 days immediately preceding the filing of the complaint.

When used in statutes conferring jurisdiction, residence is interpreted to mean legal residence or domicile. The issue of legal residency is principally one of intent. Presence, abode, property ownership, and other facts are often considered, but intent is the key factor. *Smith, supra*, citing *Fowler v Fowler*, 191 Mich App.-318, 319; 477 NW2d 112 (1991).

Here, the parties were married in Michigan. Plaintiff's mother, father and other relatives reside here. Plaintiff maintained her voting privileges consistent with her intent to reside in Michigan. Further, plaintiff has a Michigan Driver's License and has paid dues for a health club membership in Eastpointe for the past 17 years. Plaintiff has also provided an affidavit which satisfies the Court plaintiff intended to retain Michigan as her residence although she moved several times while married to defendant. Additionally, the Court accepts plaintiff's statements in her affidavit to the effect she was a resident of Macomb County for at least 10 days prior to the date she filed her complaint and only returned to Tennessee in an effort to work things out with defendant. Unlike the defendant in *Smith, supra*, 218 Mich App at 727, defendant herein has not offered documentary evidence to raise a question of fact regarding plaintiff's residency. The Court is satisfied the jurisdictional requirements of MCL 552.9; MSA 25.89 have been met.

Defendant next contends the Court should decline to exercise its jurisdiction under the Uniform Child Custody and Jurisdiction Act, MCL 600.651 *et seq*; MSA 27A.651 *et seq* ("UCCJA") as Tennessee is the home state of Alexander and it has already taken jurisdiction of the matter. Again, plaintiff disagrees. She contends this Court should exercise jurisdiction over Alexander as the Tennessee courts have not exercised jurisdiction over him.

The Court is satisfied it has jurisdiction with regard to plaintiff's complaint under MCL 552.9; MSA 25.89. Consistent with this, the Court finds it has jurisdiction to determine custody, care and support issues regarding Alexander pursuant to MCL 552.15; MSA 25.95 and MCL 552.16; MSA 25.96. Finally, the Court is satisfied it has jurisdiction under the UCCJA, specifically MCL 600.653(1), (b); MSA 27A.653. Alexander has significant connections with this state as several of his maternal relatives reside here and there

is substantial evidence available in Michigan regarding his present and future care. Further, as plaintiff's complaint divorce was filed prior to defendant's complaint, the Court is satisfied Michigan has priority over any custody matters. See MCL 600.656(1); MSA 27A.656. Finally, the Court is not persuaded Michigan is an inconvenient forum. See MCL 600.657; MSA 27A.657.

Defendant finally contends the Court should stay proceedings since defendant is a member of the United States military. Defendant relies upon the Soldiers and Sailors Relief Act, 50 USC App § 501 *et seq*. Once again, plaintiff disagrees. She contends the Act is only applicable in times of war when a party would not be available to defend themselves in litigation. According to plaintiff, defendant has hired an attorney and is capable defending himself.

The Court has reviewed the Act. The Court is not persuaded defendant"s ability to conduct his defense is materially affected by his military service. See, for example, *Chlebek v Mikrut*, Mich 414; 58 NW2d 125 (1953). The Court declines to stay proceedings at this time. For the reasons set forth above, defendant"s motion dismissal by summary disposition pursuant to MCR 2.116(C)(4 is DENIED.

IT IS SO ORDERED.

DATED: SEPTEMBER 24, 1998

PETER J. MACERONI
Circuit Judge

cc: Joseph E. Mihelich
Richard P. Diehl

APPENDIX F

IN THE FOURTH CIRCUIT COURT
FOR DAVIDSON COUNTY, TENNESSEE

Docket No. 98D-2257

THOMAS EDWARD KNUTH,
Plaintiff,

vs.

SANDRA MARIE KNUTH
Defendant.

ORDER

This cause having come before the Court on the 7th day of August 1998, upon Plaintiff's *Motion to EstablishProper Venue in the State of Tennessee and to Render all Orders Outside this Jurisdiction Void,* after argument of counsel, it is the ORDER of the Court that this Court has jurisdiction over this matter.

This Court DENIES the Motion to render void orders issued by any other Court.

IT IS SO ORDERED.

MURIEL ROBINSON, JUDGE

Stamped Entered October 27, 1998

APPROVED FOR ENTRY BY:

Lew Conner
Grant Glassford
Attorneys for wife